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In the Supreme Court of the United States

OCTOBER TERM, 1928

No. 416

UNITED STATES OF AMERICA EX REL. NIELS PETER Claussen, petitioner

v.

HON. BENJAMIN M. DAY, COMMISSIONER OF IMMIGRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

The Circuit Court of Appeals affirmed the judgment of the District Court without opinion. (R. 96.)

JURISDICTION OF THIS COURT

The judgment sought to be reviewed was entered on June 12, 1928. (R. 96.) Petition for certiorari was filed in this Court on September 6, 1928.

The jurisdiction of this Court to issue the writ prayed for is conferred by the Act of February 13, 1925.

QUESTION PRESENTED

The question presented is whether the return of an alien seaman to the United States at the conclusion of a trip to South American and Cuban ports aboard an American vessel may be treated as an "entry" into the United States within the meaning of the Immigration Laws.

STATEMENT

This is the second appearance of this case before this Court on petition for writ of certiorari.

The first petition was granted by this Court on March 7, 1927, under No. 848; 273 U. S. 688. On January 9, 1928, this Court remanded the cause to the District Court "with a direction to dismiss the cause as abated," it having been made to appear that the respondent had resigned his office as Commissioner of Immigration, and no proper steps had been taken by petitioner to substitute the new incumbent. Thereafter petitioner instituted new habeas corpus proceedings. The writ issued, but after a hearing was ordered dismissed. (R. 2 and 78.) On appeal that action was affirmed. (R. 96.)

ARGUMENT

Inasmuch as this Court granted the first petition for certiorari in this case, and the present petition, as the result of new habeas corpus proceedings,

raises the same question, the respondent knows of no grounds for opposing the present petition beyond those set forth in its brief filed in the original case, *supra*.

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SEPTEMBER, 1928.

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THE UNITED STATES OF AMERICA EX REL. NIELS PETER CLAUSSEN, petitioner

v.

HONORABLE BENJAMIN M. DAY, COMMISSIONER OF IMMIGRATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

The Circuit Court of Appeals affirmed the judgment of the trial court without opinion. (R. 94.) The record contains, however, the opinions of the District Court and the Circuit Court of Appeals rendered in the first habeas corpus proceeding which presented the precise question raised in the present case. The opinion of the District Court in the first case appears at page 34 of the record, but it has not been reported. The opinion of the Circuit

Court of Appeals in the first case appears at page 40 et seq. of the record, and is reported in 16 F. (2d) 15. Writ of certiorari was granted in that case March 7, 1927, 273 U. S. 688–689, but on "suggestion of abatement" submitted by respondent, this Court on January 9, 1928, reversed the judgments below and remanded the cause to the District Court with directions to "dismiss the cause as abated." (276 U. S. 590.)

JURISDICTION OF THIS COURT

The judgment now to be reviewed was entered on June 12, 1928. (R. 57.) Petition for certiorari was filed in this Court on September 6, 1928, and granted on October 22, 1928, pursuant to the provisions of the Act of February 13, 1925. (R. 59.)

THE QUESTION

Section 19 of the Immigration Act of 1917 provides for deportation of aliens who commit crimes involving moral turpitude within five years after "entry" into the United States and who are sentenced therefor to imprisonment for terms of one year or more. Petitioner, an alien seaman, shipped on an American vessel for a voyage to foreign ports and return. The only contention seriously urged by petitioner is that his return to this country did not constitute an "entry" because, having sailed on an American vessel, he never left the United States, his theory being that an American ship is American

territory. The only question really presented is, therefore, the applicability of this theory.

THE STATUTES

Section 19 of the Immigration Act of 1917, c. 29, 39 Stat. 874, 889 (U. S. C., Title 8, Sec. 155), so far as pertinent provides:

> * * * any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported * * *.

The terms "alien," "United States," and "seaman" are defined in Section 1 of the Act (U. S. C., Title 8, Sec. 173) as follows:

> That the word "alien" wherever used in this Act shall include any person not a native-born or naturalized citizen of the United States; * * *. That the term "United States" as used in the title as well as in the various sections of this Act shall be construed to mean the United States, and any waters, territory, or other place subject to the jurisdiction thereof, except the Isthmian Canal Zone; * * *. That the term "seaman" as used in this Act shall include every person signed on the ship's article and employed in any capacity on board

> any vessel arriving in the United States from any foreign port or place. * * *

Other provisions of the Immigration Act of 1917 relating to seamen are set forth in the Appendix hereto.

STATEMENT

Petitioner, a seaman and Danish subject came to this country in 1912 as a member of the crew of a British ship. The next day he shipped in an American schooner and his subsequent voyages have been under the American flag. His last foreign voyage began in October, 1917, when he signed as one of the crew of the American schooner *Elisha Atkins* for a voyage to South America and back to the United States by way of Cuba. (R. 3, 4.) This voyage ended on March 25, 1918, at Boston, Massachusetts. Since then he has been employed in the American coastwise trade. (R. 22.) In the petition for a writ of habeas corpus it was alleged that in 1918 he became a delegate of the Seamen's Union in the Port of New York, and remained in that capacity until 1920, when he became agent for the Seamen's Union in Portland, Maine. (R. 5.) Meanwhile, and on June 6, 1919, he took out his first naturalization papers, but he has never received his final papers. (R. 23.) In May, 1921, there was a strike by seamen in connection with which a man was killed. The petitioner and six others were indicted for causing his death, and on June 17, 1921, the petitioner pleaded guilty of man-

slaughter and was sentenced by the Cumberland County Court at Portland, Maine, to serve a minimum term of four and one-half years. (R. 5, 17, 23.) While serving that sentence he was accorded a hearing by the immigration authorities upon the charge that he was unlawfully in the United States in that he had been sentenced subsequent to the passage of the Immigration Act of 1917 to imprisonment for a term of one year or more because of the conviction in this country of a crime involving moral turpitude committed within five years after entry. (R. 21, 26.) As a result of this hearing petitioner was on November 19, 1921, ordered deported upon the expiration of his sentence. (R. 26.) Habeas corpus proceedings were then instituted in his behalf in the District Court of the United States for the Southern District of New York, the contention being made that an American ship is American territory and that as petitioner made his South American trip on an American vessel, he never departed from the United States and therefore never "entered" the United States when he returned upon that vessel in 1918. The District Court, however, refused to discharge the petitioner (R. 48), and its decision was affirmed by the Circuit Court of Appeals for the Second Circuit. (R. 57.)

SUMMARY OF ARGUMENT

The sole question presented is whether petitioner when he landed at Boston on March 25, 1918, after a voyage to South American and Cuban ports, then

entered the United States within the meaning of the statute, or whether he had been within the United States while on the voyage. The doctrine that for some purposes an American ship is American territory has no application to the present case. To give it such application is to do violence to both the purpose and the letter of the Act, and finds no support in the decisions of the courts.

ARGUMENT

THE THEORY THAT AN AMERICAN SHIP IS AMERICAN TERRITORY DOES NOT APPLY IN THIS CASE. PETITIONER DEPARTED FROM THE UNITED STATES ON HIS VOYAGE TO SOUTH AMERICA, AND HIS RETURN CONSTITUTED AN ENTRY WITHIN THE MEANING OF SECTION 19 OF THE IMMIGRATION ACT OF 1917

The question in the case is not whether petitioner's entry was lawful or unlawful; neither should it be confused with another question formerly debated but now settled, namely, whether it is the *first entry alone* which starts the running of the period within which the alien may be deported. It is now settled that the prohibitions against admission of aliens as well as the provisions for their deportation apply to "aliens whose history, condition or characteristics brought them within the descriptive clauses, irrespective of any qualification arising out of a previous residence or domicile in this country." *Lapina* v. *Williams*, 232 U. S. 78, 91. See also *Lewis* v. *Frick*, 233 U. S. 291; *Cosmano* v. *Davis*, 273 U. S. 738; *United States* v. *Flynn*, 17 F. (2d) 524, and cases there cited.

In the petition for certiorari (p. 7) it is stated that—

> It will be seen, therefore that the only question presented on this appeal is whether, when Claussen shipped out of New York on the American schooner *Elisha Atkins* on October 19, 1917, for a round trip continuous voyage, as a member of the crew, to South American and Cuban ports *and return*, he departed from the United States, within the meaning of the immigration laws, with such effect that his arrival back in the United States, as a member of such crew, and landing at Boston, at the end of such voyage, on March 25th, 1918, constitutes a new entry into the United States within the meaning of the immigration laws, such as will toll the five year period within which the crime, of which he was convicted, must have been committed in order to warrant deportation.

The sole question, therefore, is whether Claussen entered the United States on March 25, 1918, after he returned from South America and Cuba, or whether, within the meaning of the statute, he had been in the United States all the time. Such an attempt to apply the doctrine that an American ship is American territory finds no support in the statute or in the applicable decisions of the courts. The Act is entitled, "An Act to regulate the immigration of aliens to, and the residence of aliens in, the United States." The term "United States," as used in the title, as well as in the various sections, is to be construed to mean "the United States, and any

waters, territory, or other place subject to the jurisdiction thereof, except the Isthmian Canal Zone," and by the same section it is provided that if any alien shall leave the Canal Zone or any insular possession of the United States and attempt to enter any other place under the jurisdiction of the United States, nothing contained in the Act shall be construed as permitting him to enter under any other conditions than those applicable to all aliens. The term "seaman" is defined to include every person signed on the ship's articles and employed in any capacity on board any vessel "arriving in the United States from any foreign port or place." The purpose of the Act is not to regulate navigation or terms of employment of seamen or their treatment while on board ship. Its purpose is to regulate immigration to, and residence of aliens in, the United States. To say that an alien seaman who leaves this country on a ship bound for South America, and five months later returns to an American port, has not left the United States, and when he is discharged and lands at Boston does not enter the United States, is to do violence to the plain language of the statute, whether his voyage is on an American ship or any other ship, and whether he returns by the same ship on which he sailed or by some other ship. What was said by this Court in *Cunard Steamship Company* v. *Mellon*, 262 U. S. 100, 122, of the definition of the term United States used in the Eighteenth Amendment, is applicable here. "The immediate context and the purport of

the entire section show that the term is used in a physical and not a metaphorical sense,—that it refers to areas or districts having fixity of location and recognized boundaries." In that case the question involved was whether the Amendment covered domestic merchant ships outside the waters of the United States, and this Court held that it did not.

In *Scharrenberg* v. *Dollar S. S. Co.*, 245 U. S. 122, this Court had under consideration Sections 4 and 5 of the Act of February 20, 1907, c. 1134, 34 Stat. 898, 900, as amended by the Act of March 26, 1910, c. 128, 36 Stat. 263, commonly known as the Alien Contract Labor Law. It was claimed that by employing and bringing an alien seaman to San Francisco for the purpose of shipping him, followed by his actually being shipped as a seaman on board a vessel of American registry, the defendants violated the provisions of the Act prohibiting the importation of contract laborers "into the United States." In overruling this contention this Court said, at page 127:

> Equally unallowable is the contention that a ship of American registry engaged in foreign commerce is a part of the territory of the United States in such a sense that men employed on it can be said to be laboring "in the United States" or "performing labor in this country." It is, of course, true that for the purposes of jurisdiction a ship, even on the high seas, is often said to be a part of the territory of the nation whose flag it flies. But in the physical sense this

> expression is obviously figurative (International Law Digest, Moore, vol. I, § 174), and to expand the doctrine to the extent of treating seamen employed on such a ship as working in the country of its registry is quite impossible. Thus the seamen employed on the *Mackinaw* were not within either the spirit or the letter of the law on which the petitioner bases his action and in any point of view his contention is fanciful and unsound and must be denied.

See also *In re Lam Mow*, 19 F. (2d) 951; *Castner, Curran & Bullitt, Inc.*, v. *Hamilton*, 275 Fed. 203, 205. In the *Lam Mow case* it was held that a Chinese born upon an American vessel on the high seas, whose parents were alien Chinese, was not born in the United States within the meaning of the Fourteenth Amendment.

In the light of these decisions and of the definition of the term United States, contained in Section 1 of the statute, and taking into consideration the obvious purpose of the Act, the conclusion seems inescapable that petitioner while on his foreign voyage was outside the United States and that upon his return he entered the United States. Looked at in a practical way, what happened upon his arrival at Boston from South America on March 25, 1918, had all the characteristics of an entry, no matter how narrow a meaning is given to that word. Apparently for the first time he concluded to remain permanently in this country. He became a delegate of the Seamen's Union, and on June 6,

1919, took out his first naturalization papers. It was an entry in the real sense, not like his first arrival in 1912, when, on the next day after his arrival, he shipped as a member of the crew of another vessel. In *United States* v. *International Mercantile Marine* (District Court, Southern District of New York), 219 Fed. 328, it was held that two seamen coming to the port of New York with no intention of remaining, but intending to stay only long enough to find an available ship to carry them back to foreign shores did not "enter" the United States within the meaning of the head tax provisions of the Immigration Act of 1907. The court said (p. 330):

> The question always is whether the sailor has entered the country in any real sense, or has merely used it as a point from which to embark on the next available ship.

Upon principle, the fact that Ciaussen sailed on the foreign voyage in an American ship rather than a foreign ship would seem to make no difference. There is nothing in the immigration laws to indicate that the nationality of a vessel bringing an alien to our shores plays any part in the determination of the question whether he enters the United States within the meaning of those laws. A man who commits a felony within five years after he enters the United States is no less a menace to our peace and welfare because he came in an American ship instead of a foreign ship. The statute is designed to permit this country to rid itself of such

alien criminals, and the nationality of the ship from which they land does not enter into it at all.

Moreover, if petitioner's arrival and landing in the United States in 1912 from Buenos Aires was an entry into the United States within the meaning of the Immigration laws here involved, and in his petition for habeas corpus, he repeatedly makes that direct concession (R. pp. 3, 5, 6), then each subsequent return and landing was an entry, for no matter how many times an alien seaman, such as petitioner, returns and lands pursuant to his calling, the Immigration law (Sec. 33, Act of 1917), treats all such landings as of exactly the same status. In other words, the subsequent landings of an alien seaman like petitioner confer upon him the same and not different rights. Section 33 of the Act of 1917, *supra*, governs the right of an alien seaman to be paid off and discharged in a port of the United States as was done in petitioner's case. R. 14.)

It provides that such an alien seaman so paid off and discharged may be allowed to land only for the purpose of reshipping "on board any other vessel bound to any foreign port or place." That restriction applies alike to all landings of an alien seaman as such. Thus there is in the law absolutely no basis for petitioner's claim that his arrival in 1912 was an entry for deportation purposes, but not his subsequent arrivals from foreign voyages. The fact is that until his arrival from a foreign voyage

in 1918 petitioner always shipped foreign (R. 3), thus complying with the requirements of the statute. When, however, upon his last return from such service he was discharged, and instead of reshipping foreign as the statute required, and without being examined for general admission, he confined himself to residence on land and service in the coastwise trade, he then became amenable not only to the provisions of Section 34, but other provisions of the Act of 1917, *supra*, dealing with aliens unlawfully in the United States.

Under Section 34, petitioner's last arrival in 1918 is treated as an entry, and he is declared to be "unlawfully in the United States." His arrest by the Secretary within three years thereafter is authorized for the specific purpose of definitely determining whether as an alien he was qualified "for admission to the United States." If so, he was to be admitted, and if not qualified, was to be *deported*. He was not, however, dealt with under Section 34, doubtless because his case did not come to the attention of the immigration authorities prior to the expiration of the three-year period. (R. 27–28.) He thus acquired immunity from possible deportation growing out of such illegal landing, but that is all that he received. Section 34 makes it plain that his unlawful landing transformed him from the status of seaman into the status of an ordinary alien, and as it was his landing in 1918 that caused Section 34 to declare him to be "unlawfully in the

United States," not the entry of 1912 as petitioner contends, there appears no escape from utilizing the 1918 entry in dealing with petitioner as an alien based upon subsequent prohibited conduct, as in the case at bar.

As above pointed out there is no logical basis for adopting the 1912 landing as an entry, nor any landing prior to 1918, for none of them was for the purpose, as was the 1918 landing, of residing here or serving in the coastwise trade. Unless, therefore, the 1918 entry be treated as the entry for dealing with petitioner as an alien, there exists no ground for utilizing any prior landing for that purpose, and he thus becomes endowed with a liberty of conduct enjoyed by no other type of alien. Such a result should not be lightly arrived at. The statute does not compel such an interpretation.

Petitioner relies upon the following cases: *Chinese Cabin Waiter*, 13 Fed. 286; *Chinese Laborers on Shipboard*, 13 Fed. 291; *Petition of Hersvik*, 1 F. (2d) 449; *Weedin* v. *Banzo Okada*, 2 F. (2d) 321; *Ex parte Nagata*, 11 F. (2d) 178; *Kirk* v. *Lawrenson*, 24 F. (2d) 64, and *Nagle* v. *Hansen*, 17 F. (2d) 557. The two earlier decisions were the basis of the decisions in the later cases.

The case of *Chinese Cabin Waiter*, 13 Fed. 286, decided by the Circuit Court for California August 27, 1882, and the case of *Chinese Laborers on Shipboard*, 13 Fed. 291, decided by the same court on August 29, 1882, arose under the Act of May 6,

1882, c. 126, 22 Stat. 58, prohibiting the coming of Chinese laborers to the United States for a period of ten years. The second section made the master of any vessel knowingly bringing within the United States any Chinese laborer "from any foreign port or place" guilty of a misdemeanor. The third section declared that these provisions should not apply to Chinese laborers who were in the United States on the 17th of November, 1880, or who should come before the expiration of ninety days from the passage of the Act. The petitioner, a Chinese subject, came to California six years before the passage of the Act and had since resided in that state. He was employed as a seaman on a ship which sailed from San Francisco in May, 1882, bound on a voyage to Australia, and returned to San Francisco on the 8th of August, 1882; and he alleged that since his return the captain had refused to allow him to land. The captain of the ship alleged that he retained the petitioner by reason of the prohibitory and punitive provisions of the Act. The court said (p. 288):

> The question presented is whether the petitioner is within the class of laborers whose landing in the United States is prohibited by the Act of Congress.

The court pointed out that the captain was desirous of obeying the law but was embarrassed because he was bound by his contract to return the petitioner to the port of shipment and therefore

"asks the direction of the court as to his duty." The court said (p. 288):

> We do not, however, find any difficulty in arriving at the meaning of the Act.

The court then pointed out that the master of the vessel was prohibited by the statute from bringing within the United States any Chinese laborer "from any foreign port or place; and that means, from bringing any Chinese laborer embarking at a foreign port or place," and that it was "laborers thus taken on board that the master is prohibited from bringing into the United States." After pointing out that any other construction would compel a master of an American vessel leaving a port of the United States with a Chinese seaman to set him adrift at a foreign port at which the vessel might touch and prohibit the master from bringing him back in accordance with the bond which he was required by law to execute (citing Revised Statutes, Sec. 4576), the Court continued (p. 289):

> The object of the act of Congress was to prevent the further immigration of Chinese laborers to the United States, not to expel those already here.

There can be no question of the soundness of that interpretation of the statute, and it was not necessary to go further. Nevertheless, the court went on to say:

> And in this connection it should not be overlooked that the petitioner, while on

> board the steamship as one of its crew, was within the jurisdiction of the United States, at all times under their protection, and amenable to their laws. An American vessel is deemed to be a part of the territory of the state within which its home port is situated, and as such a part of the territory of the United States. The rights of its crew are measured by the laws of its state or nation, and their contracts are enforced by its tribunals.

The case of the *Chinese Laborers on Shipboard*, decided by the same court two days later, was, as the court said (13 Fed. 292), "substantially like that of *Ah Sing*, the Chinese cabin waiter of the same vessel, recently before us on habeas corpus," the only difference being that in the case then under consideration the petitioners had, on several occasions, by permission of the captain, gone on shore and remained a few hours. The court held that the status of the petitioners and their relation to the vessel were not changed by the fact that they were permitted to land for a few hours at the port of Sydney.

These two cases were beyond question properly decided, though in our judgment what was said about an American ship being American territory was not necessary for their decision. The only question necessary to decide was the meaning of the language of the statute prohibiting the landing of Chinese laborers "from any foreign port or place,"

and the object of the statute was to prevent further Chinese immigration, not to deport Chinese lawfully in the country at the time the Act took effect. No question of the meaning of the word entry, as used in the statute now under consideration, was presented or decided. The present statute, unlike the Chinese Exclusion Act, provides for deportation of those already here, not for exclusion of those arriving afterwards. Furthermore, when read carefully, it is apparent that the court did not mean to say that a seaman on board an American vessel must be deemed within the United States. He was (p. 289) "within the jurisdiction of the United States, and at all times under their protection, and amenable to their laws," and it would be a "singular circumstance" if an Act of Congress had been so framed that a subject of China by his temporary employment on an American vessel "was deprived of the right of residence acquired under the treaty with his country."

The next case, *Petition of Hersvik*, 1 F. (2d) 449 (District Court, Southern District of California), involved the question whether the petitioner, who had been a resident of this country for more than three years, relinquished the right to remain in this country because of a voyage on an American vessel to South America and return. Petitioner was an alien and a seaman by occupation. He shipped on an American vessel for a voyage to Chile and return. Upon his return he was detained by immigration officers as being an alien not

entitled to be admitted to the United States. The court pointed out that petitioner was not within the class of immigrants defined by the Immigration Act of 1294 as being aliens "departing from any place outside the United States destined for the United States." This case seems to have no particular bearing upon the present case.

The case of *Weedin* v. *Banzo Okada*, 2 F. (2d) 321 (Circuit Court of Appeals, Ninth Circuit), arose under the provision of Section 19 of this same Act, which provides for the deportation within five years after entry of any alien who at the time of entry was a member of one or more of the classes excluded by law. Okada entered the United States unlawfully in 1917, and continued to reside here until June, 1921. In the latter month he shipped as a member of the crew of an American vessel on a voyage to Oriental ports and return, and came back on the vessel in 1921. In April, 1924, a warrant for his deportation was issued. The court said:

> On the foregoing facts the court below discharged the appellee from custody, and the Commissioner of Immigration has appealed. The five-year period commences to run from the date of the prohibited entry, and the bar of the statute was here complete, unless the entry at the close of the voyage in question was prohibited by law.

The court held that the "entry" at the close of the voyage in question was not prohibited by law.

That was all that was necessary to the decision of that case, but the court went on to quote from the case of *Chinese Cabin Waiter*, 13 Fed. 286. The distinction between that case and the case at bar is apparent. There the court was concerned with the question whether the relator's entry was lawful. In the present case the question is, was there an entry?

Ex parte Nagata, 11 F. (2d) 178 (District Court for the Southern District of California), was decided on the authority of the *Okada case*, and like that case involved primarily the question whether the subsequent entry was legal or illegal.

Nagle v. *Hansen*, 17 F. (2d) 557 (Circuit Court of Appeals, Ninth Circuit), merely involved the question whether Hansen had so far lost his status of seaman as to empower the Secretary of Labor to deport him for unlawful entry at any time within the general five-year period of limitations, or whether deportation must be made within the three-year period applicable solely to seamen. The opinion rather assumes that Hansen's landing after a round trip voyage was an entry. The case does not help petitioner, but on the contrary seems to be against him.

In *Kirk* v. *United States ex rel. Lawrenson* (Circuit Court of Appeals, Fifth Circuit), 24 F. (2d) 64, it was sought to deport Lawrenson, a good faith seaman, because he did not possess when arrested "an unexpired immigration visa, and had never been admitted to the United States as an immigrant for residence purposes." He had, how-

ever, declared his intention to become a citizen, and had served on board American vessels for three years, thus giving him certain limited rights of citizenship. In holding that he was not subject to deportation, the Circuit Court of Appeals said (p. 66):

> Appellee was not of an undesirable class, was qualified for admission under the Immigration Act of 1917, and was not subject to deportation for crime or for any other reason, unless it be that his return from a foreign voyage in 1926 was unlawful. It is contrary to all reason to suppose that every return of an alien seaman having rights as an American citizen, limited and qualified though such rights may be, from a foreign voyage to a port of the United States on an American vessel, should be within the ordinary rule that every entry constitutes a new entry. * * *

The court thus commented on the ruling in the case at bar (p. 66):

> The opposite view finds some support in *United States* v. *Curran*, 16 F. (2d) 15, decided by the Circuit Court of Appeals for the Second Circuit; but that decision apparently recognizes that the case of *Weedin* v. *Banzo Okada, supra*, was correctly decided, and does not proceed on the theory that an alien seaman by making a foreign voyage on an American vessel loses any rights given him by statute, although it does hold that conviction of a crime involving moral turpitude overrides all such rights. * * *

In the case at bar petitioner had declared his intention to become a citizen, but had not followed it up with three years service on American ships, so that he did not have the status which Lawrenson, *supra*, had. Moreover, it seems reasonably clear that in the *Lawrenson case* the citizenship status was regarded as rather controlling.

In his dissenting opinion Judge Hand in petitioner's first habeas corpus proceeding (R. 42), says that it seems to him "that there is a strong reason to distinguish the return of a seaman at the end of a voyage for which he has signed the articles and on the same ship on which he left, from a reentry one has not bound oneself to make when one went away." However, in *Cosmano* v. *Davis*, 273 U. S. 738, the alien who went abroad was under bond to appear in a criminal case and was bound to return, yet his return was considered an entry and certiorari was denied by this Court December 13, 1926. If the question was whether the return was an illegal entry, there might be some force in the contention, but that is not the question. So also the fear of the dissenting Judge that the decision below will have the effect of subjecting to the immigration laws, including the quota provisions, alien seamen employed on vessels engaged in the coastwise trade which happen, in the course of their voyages, to pass the three-mile limit, is groundless. The distinction between the coastwise trade and immigration is obvious, and has always been recognized in

our laws. The statute which we are considering was passed to regulate the immigration of aliens to, and their residence in, the United States, and does not purport to regulate the movement of aliens from one place in the United States to another. Sections 34 and 35 of the same Act contain provisions especially relating to alien seamen arriving in the United States from "any foreign port or place," and for alien seamen landing in a port of the United States contrary to the provisions of the Act, but nowhere do we find evidence of an intent by Congress to regulate ordinary coastwise traffic through an immigration statute.

Judge Hand's fear of the consequences which may follow the decision below seems to us to be unsubstantial. The statute must be given a sensible construction to effect the purpose intended by Congress.

The judgment of the Circuit Court of Appeals should be affirmed.

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Solicitor General.

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MARCH, 1929.

APPENDIX

Immigration Act of February 5, 1917, c. 29, 39 Stat. 874:

> SEC. 32. That no alien excluded from admission into the United States by any law, convention, or treaty of the United States regulating the immigration of aliens, and employed on board any vessel arriving in the United States from any foreign port or place, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to regulations prescribed by the Secretary of Labor providing for the ultimate removal or deportation of such alien from the United States, and the negligent failure of the owner, agent, consignee, or master of such vessel to detain on board any such alien after notice in writing by the immigration officer in charge at the port of arrival, and to deport such alien, if required by such immigration officer or by the Secretary of Labor, shall render such owner, agent, consignee, or master liable to a penalty not exceeding $1,000, for which sum the said vessel shall be liable, and may be seized and proceeded against by way of libel in any district court of the United States having jurisdiction of the offense.
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> SEC. 33. That it shall be unlawful and be deemed a violation of the preceding section to pay off or discharge any alien employed

on board any vessel arriving in the United States from any foreign port or place, unless duly admitted pursuant to the laws and treaties of the United States regulating the immigration of aliens: *Provided*, That in case any such alien intends to reship on board any other vessel bound to any foreign port or place, he shall be allowed to land for the purpose of so reshipping, under such regulations as the Secretary of Labor may prescribe to prevent aliens not admissible under any law, convention, or treaty from remaining permanently in the United States, and may be paid off, discharged, and permitted to remove his effects, anything in such laws or treaties or in this Act to the contrary notwithstanding, provided due notice of such proposed action be given by the master or the seaman himself to the principal immigration officer in charge at the port of arrival. (U. S. C. Title 8, Sec. 168.)

SEC. 34. That any alien seaman who shall land in a port of the United States contrary to the provisions of this Act shall be deemed to be unlawfully in the United States, and shall, at any time within three years thereafter, upon the warrant of the Secretary of Labor, be taken into custody and brought before a board of special inquiry for examination as to his qualifications for admission to the United States, and if not admitted said alien seaman shall be deported at the expense of the appropriation for this Act as provided in section twenty of this Act. (U. S. C. Title 8, Sec. 166.)

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